

NOTICE OF PROPOSAL TO ADOPT REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3, Department of Corrections

AUTHORITY:

Under the authority established in Penal Code (PC) Section 5058, the Director of Corrections proposes to change Title 15 of the California Code of Regulations by adopting regulation(s) governing inmate marriages.

REFERENCE:

These regulations implement, interpret, and/or make specific PC Sections 2601(f) and 5054; and Family Code (FC) Sections 300, 350-359, 400-402, and 500.

PUBLIC HEARING:

Date and Time: November 5, 1998 at 9:00 a.m.

Place: 1416 Ninth Street
Department of Water Resources Auditorium
Sacramento, CA 95814

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close November 5, 1998 at 5:00 p.m.. Any person may submit written comments about the proposed changes. To be considered by the Department, comments must be received at the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001, before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to Bonnie Garibay, Chief, Regulation and Policy Management Branch, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001 or telephone (916) 358-2456.

ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

This action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, federal funding to the State, or private persons. It is also determined that the action does not affect small businesses nor have a significant adverse economic impact on businesses, small businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons, or housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

DETERMINATION:

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The text of the proposed regulation(s), the Initial Statement of Reasons and other related material are available upon request directed to the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, the Department will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation(s) is permanently adopted.

INFORMATIVE DIGEST:

PC Section 2601(f) states that inmates have a civil right to marry.

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for administration of prisons.

FC Section 300 states that "Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization as authorized by this division, except as provided by Section 425 and Part 4 (commencing with Section 500)."

FC Section 350 states that a marriage license from the county clerk must first be obtained before entering a marriage or declaring a marriage pursuant to Section 425.

FC Section 351 states what information must be on the marriage license, i.e., the identity of the parties to the marriage; the full names and places of residence of the parties to be married; and the parties ages.

FC Section 352 states that a marriage license shall not be granted if either party to be married lacks the capacity to enter into a valid marriage or is under the influence of an intoxicating liquor or narcotic drug at the time an application for a license is made.

FC Section 353 states that "If an applicant for a marriage is under the age of 18 years, the license may be granted only if both parties are capable of consenting to and consummating marriage as provided for in Section 302, and the consent or court order required by Section 303 are filed with the county clerk."

FC Section 354 provides for requiring proof of facts, i.e., marriage applicants may be required to show authentic identification of name; as a means of ascertaining the facts mentioned in this part, the clerk "may examine the applicants for a marriage license on oath at the time of the application" and shall reduce the examination to writing for the applicants signature; additional proof may be requested by the clerk for accuracy of the facts stated; and applicants shall not be required to state their race or color for any reason.

FC Section 355 states that "the application for a marriage license and the marriage license shall be prescribed by the State Department of Health Services" and that such applications "shall include an affidavit on the back, which the applicants shall sign, affirming that they received the brochure provided for in Section 358."

FC Section 356 states that marriage licenses shall expire 90 days from the issuance date and that the expiration date shall be noted on the license.

FC Section 357 describes the duties of the county clerk and county recorder, e.g., the county clerk shall give each marriage license a number and send copies of issued licenses to the county recorder; the county recorder shall notify licenseholders no later than 60 days after issuance that their license will automatically expire on the date shown on the license; and licenseholders shall be notified by the county recorder that the certificate of registry and the endorsed license shall be returned to the recorder's office by the person solemnizing the marriage within 30 days after the ceremony.

FC Section 358 states that the State Department of Health Services shall prepare and publish a brochure containing information about genetic defects and diseases and testing and treatment centers available; Acquired Immune Deficiency Syndrome; provide copies of this brochure to the county clerks and notary publics for distribution; and to the extent possible, shall seek to combine all statutorily required information on marriage licenses in a single brochure.

FC Section 359 states a certificate of registry of marriage shall be obtained from the county clerk by those applicants wanting a marriage license; the certificate shall be filled out by the applicants in the presence of the county clerk and presented to the person solemnizing the marriage; the person solemnizing the marriage shall complete the certificate and shall have the signature and address of one witness entered on the certificate; the person solemnizing the marriage shall return the certificate to the county recorder within 30 days after the ceremony; and the certificate shall be returned before the expiration date.

FC Section 400 provides a listing of those persons authorized to solemnize marriages, e.g., priests, ministers, rabbis, judges, justices of the peace etc.

FC Section 401 states that county clerks are designated commissioners of civil marriages and that commissioners may appoint deputy commissioners to solemnize marriages.

FC Section 402 states that in addition to those persons listed in FC Section 400, officials from nonprofit religious institutions that have on file with the Secretary of State's office their articles of incorporation may be licensed by the county to perform marriages. Those officials being licensed shall have the degree of doctor of philosophy and must perform religious services or rites for the institution on a regular basis. No fee shall be charged for performing the marriage.

FC Section 500 states "When an unmarried man and unmarried woman, not minors, have been living together as husband and wife, they may be married pursuant to this chapter by a person authorized to solemnize a marriage under Chapter 1 (commencing with Section 400) of Part 3.

This action will provide a means of:

- Complying with an inmate's right to marry as prescribed by the PC Section 2601(f).
- Complying with the Tooma v. Rowland court mandate, which relates to provisions of the Administrative Procedure Act.
- Informing staff and inmates on existing departmental policy related to inmate marriages.